

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFF(S)

Kwabena Asante

(b) County of Residence of First Listed Plaintiff Philadelphia
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

George F. Schoener, Jr., Esq.
8 Penn Center, Suite 1301
Philadelphia, PA 19103
215/564-9147

DEFENDANT(S)

DCA Food Industries, Inc.

County of Residence of First Listed Defendant Jessup, Maryland

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

SEE ATTACHED LIST OF DEFENDANTS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PLF	DEF		PLF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med Malpractice <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (do not cite jurisdictional statutes unless diversity): 28 U.S.C. §§1332 and 1441

Brief description of cause: Personal injury from alleged defective product.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

August 18, 2006

SIGNATURE OF ATTORNEY OF RECORD

DE 442

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Moline Machinery, Ltd. IC-DISC t/a
Moline Machinery
114 S. Central Avenue
Duluth, MN 55802

Ted D. Broom, Esq.
William J. Devlin, Jr., & Assoc.
100 West Elm Street, Suite 200
Conshohocken, PA 19428
Attorneys for Moline Defendants

and

The Pillsbury Company
405 2nd Avenue S
Minneapolis, MN 55401

Denis P. McBride, Esq.
Kent & McBride
1617 JFK Blvd., Suite 1200
Philadelphia, PA 19107
Attorneys for Pillsbury Co.

and

DCA Food Industries, Inc.
P.O. Box 368
8106 Stayton Drive
Jessup, Maryland 20794

and

J. Lyons & Co., Inc.
270 W. 17th Street, Apt. 18B
New York, NY 10011

and

J. Lyons & Co.
Bedminster Down
The Pavilions, Bridgewater Road
Bristol, BS13 8 AR United Kingdom

and

Allied Lyons PLC
Bedminster Down
The Pavilions Bridgewater Road
Bristol, BS13 8 AR United Kingdom

and

Allied Domencq North American Corporation
355 Riverside Avenue
Westport, CT 06880-4810

and

Allied Domencq Spirits and Wine USA
c/o CT Corporation System
111 Eighth Avenue
New York, NY 10011

and

Allied Domecq PLC
Bedminster Down
The Pavilions Bridgewater Road
Bristol, BS13 8 AR United Kingdom

and

Pernod-Ricard USA, LLC
77 Westchester Avenue
White Plains, NY 10604

and

Pernod Picard SA
12 Place Des Ests Unis
Park, Cedex 7578316
France

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

KWABENA ASANTE	:	CIVIL ACTION
	:	
v.	:	
DCA FOOD INDUSTRIES, INC. <i>et al.</i>	:	
	:	NO.
	:	

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus -- Cases brought under 28 U.S.C. §2241 through §2255. ()
- (b) Social Security -- Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration -- Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos -- Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management -- Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management -- Cases that do not fall into any one of the other tracks. (X)

August 18, 2006

David E. Edwards

Kerry Inc; Kerry Ingredients and
Kerry PLCDateAttorney-at-lawAttorney for

215-864-7166

215-864-7123

edwardsd@whiteandwilliams.comTelephoneFax NumberE-mail Address

Civil Justice Expense and Delay Reduction Plan
Section 1:03 - Assignment to a Management Track

- (a) The clerk of court will assign cases to tracks (a) through (d) based on the initial pleading.
- (b) In all cases not appropriate for assignment by the clerk of court to tracks (a) through (d), the plaintiff shall submit to the clerk of court and serve with the complaint on all defendants a case management track designation form specifying that the plaintiff believes the case requires Standard Management or Special Management. In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.
- (c) The court may, on its own initiative or upon the request of any party, change the track assignment of any case at any time.
- (d) Nothing in this Plan is intended to abrogate or limit a judicial officer's authority in any case pending before that judicial officer, to direct pretrial and trial proceedings that are more stringent than those of the Plan and that are designed to accomplish cost and delay reduction.
- (e) Nothing in this Plan is intended to supersede Local Civil Rules 3 or 7, or the procedure for random assignment of Habeas Corpus and Social Security cases referred to magistrate judges of the court.

SPECIAL MANAGEMENT CASE ASSIGNMENTS
(See § 1.02(e) Management Track Definitions of the
Civil Justice Expense and Delay Reduction Plan)

Special management cases will usually include that class of cases commonly referred to as "complex litigation" as that term has been used in the Manuals for Complex Litigation. The first manual was prepared in 1969 and the Manual for Complex Litigation Second, MCL 2d was prepared in 1985. This term is intended to include cases that present unusual problems and require extraordinary treatment. See §0.1 of the first manual. Cases may require special or intense management by the court due to one or more of the following factors: (1) large number of parties; (2) large number of claims or defenses; (3) complex factual issues; (4) large volume of evidence; (5) problems locating or preserving evidence; (6) extensive discovery; (7) exceptionally long time needed to prepare for disposition; (8) decision needed within an exceptionally short time; and (9) need to decide preliminary issues before final disposition. It may include two or more related cases. Complex litigation typically includes such cases as antitrust cases; cases involving a large number of parties or an unincorporated association of large membership; cases involving requests for injunctive relief affecting the operation of large business entities; patent cases; copyright and trademark cases; common disaster cases such as those arising from aircraft crashes or marine disasters; actions brought by individual stockholders; stockholder's derivative and stockholder's representative actions; class actions or potential class actions; and other civil (and criminal) cases involving unusual multiplicity or complexity of factual issues. See §0.22 of the first Manual for Complex Litigation and Manual for Complex Litigation Second, Chapter 33.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

KWABENA ASANTE

v.

DCA FOOD INDUSTRIES, INC., *et al.*

Civil Action
No.

DISCLOSURE STATEMENT FORM

Please check one box:

- ☐ The nongovernmental corporate party, _____, in the above listed civil action does not have any parent corporation and publicly held corporation that owns 10% or more of its stock.
- ☒ The nongovernmental corporate party, Kerry Inc. f/k/a Kerry INgredients, in the above listed civil action has the following parent corporation(s) and publicly held corporation(s) that owns 10% of its stock: is a totally owned subsidiary of Kerry PLC.

Date

Signature David E. Edwards

Counsel for: Kerry Inc. f/k/a Kerry INgredients, Inc.,
Kerry INgredients, Inc. and Kerry Group
PLC

Federal Rule of Civil Procedure 7.1 Disclosure Statement

(a) **Who Must File: Nongovernmental Corporate Party.** A nongovernmental corporate party to an action or proceeding in a district court must file two copies of a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation.

(b) **Time for Filing; Supplemental Filing.** A party must:

- (1) file the Rule 7.1(a) statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court, and
- (2) promptly file a supplemental statement upon any change in the information that the statement requires.

MAM

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KWABENA ASANTE,

Plaintiff,

v.

DCA FOOD INDUSTRIES, INC.,
KERRY INC. f/k/a/ KERRY INGREDIENTS,
INC.,
KERRY INGREDIENTS, INC.,
KERRY GROUP PLC,
MOLINE MACHINERY, LTD., LP t/a
MOLINE MACHINERY,
MOLINE MACHINERY, LTD., IC-DISC t/a
MOLINE MACHINERY,
MOLINE MACHINERY,
J. LYONS & CO.,
J. LYONS & CO, INC.,
ALLIED LYONS PLC,
ALLIED DOMEQ NORTH AMERICAN
CORPORATION,
ALLIED DOMEQ SPIRITS AND WINE
USA,
ALLIED DOMEQ PLC,
PERNOD-RICARD USA, LLC,
PERNOD RICARD SA,
and
THE PILLSBURY COMPANY,

Defendants.

CIVIL ACTION NO.

06 -3695

A TRUE COPY CERTIFIED TO FROM THE RECORD
DATE: **AUG 18 2006**
ATTEST: *Steve Tomas*
DEPUTY CLERK, UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

NOTICE OF REMOVAL

TO: THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Pursuant to 28 U.S.C. §§1441 and 1446, Kerry Inc. f/k/a Kerry Ingredients, Inc., Kerry
Ingredients, Inc., and Kerry Group PLC (collectively "Kerry") hereby file this Notice of
Removal and respectfully petition this Court for removal of this action from the Court of

Common Pleas of Philadelphia County, Pennsylvania to this Court. This petition for removal is based upon the following grounds:

A. JURISDICTION

1. This Court has original jurisdiction of this action under 28 U.S.C. §1332, and this action is therefore removable under 28 U.S.C. §1441, in that, as further set forth herein, it is a civil action where the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and it is between citizens of different states.

B. COMMENCEMENT OF SERVICE OF PLEADINGS

2. On or about July 7, 2006, the plaintiff, Kwabena Asante (hereinafter referred to as "plaintiff" or "Asante"), filed a Summons in the Court of Common Pleas of Philadelphia county, Pennsylvania, where it was assigned docket number July Term, 2006, No. 586.

3. On July 10, 2006, plaintiff filed a Complaint. A true and correct copy of the Complaint is attached hereto as Exhibit "A."

4. Kerry received a copy of the Complaint on July 24, 2006.

5. The only defendant who has appeared in this action Pillsbury Co. has consented to Removal. See Dockets attached at Exhibit "B." Kerry has also contacted counsel for the Moline entities named who has also consented to the Removal.

C. TIMELINESS OF REMOVAL

6. This petition for removal has been filed in a timely fashion. In accordance with the requirements of 28 U.S.C. §1446(b), this petition for removal is filed within 30 days after

service and receipt of the Complaint by Kerry. Accordingly, Kerry requests that this case be removed to this Court as permitted by law.

D. BACKGROUND OF THIS DISPUTE

7. This is a product liability claim in which plaintiff seeks to recover for personal injuries, including partial amputation (Complaint ¶37), sustained in using a machine. Plaintiff asserts that at some point in time each of the defendants owned the entity that produced the machine even if that defendant (such as Kerry) did not actually make the machine at issue.

E. DIVERSITY OF CITIZENSHIP OF THE PARTIES

8. Plaintiff is an individual residing in Pennsylvania

9. None of the defendants is a citizen of Pennsylvania or has its principal place of business in Pennsylvania. DCA Foods is alleged to be a Maryland entity. The Kerry defendants are alleged to be Wisconsin entities, except for the Kerry Group which is alleged to be an Irish entity. The Moline defendants are alleged to be Minnesota entities. J. Lyons & Co., Allied Lyons PLC and Allied Domecq PLC are alleged to be United Kingdom entities. J. Lyons & Co., Inc., Allied Domecq Spirits and Wine USA and Pernod-Ricard USA, LLC, are alleged to be New York entities. Allied Domecq North American Corporation is alleged to be a Connecticut entity. Pernod Ricard SA is alleged to be a French entity.

10. There is therefore complete diversity of citizenship between plaintiff and all of the defendants. No other individual or entity has been named as a plaintiff or defendant herein or otherwise served as a party to this action.

F. AMOUNT IN CONTROVERSY

11. Plaintiff's Complaint does not allege a specific amount of damages but seeks to recover for significant personal injuries, including partial amputation and nerve damage (Complaint ¶37) in addition to lost earnings.

12. Kerry therefore believes that the amount in controversy in this action exceeds the sum or value of \$75,000, exclusive of interest and costs, and that this action is properly removable to this Court.

G. NOTICE OF REMOVAL

13. Written notice of the filing of the Notice of Removal has been served on plaintiff and the other defendants, as required by 28 U.S.C. §1446(d), and will be filed with the clerk of the Court of Common Pleas of Philadelphia County, Pennsylvania once a time-stamped copy of the Removal papers are received to be included in the materials to be submitted to the state court.

H. STATE COURT PAPERS AND PLEADINGS

14. The Complaint, attached hereto as Exhibit "A," and the Answer of Pillsbury Co., attached hereto as Exhibit "C," constitute all of the pleadings filed in the action pending in the Court of Common Pleas of Philadelphia County of which defendant is aware. A copy of the docket from Philadelphia County is attached hereto as Exhibit "B."

WHEREFORE, defendants Kerry Inc. *f/k/a* Kerry Ingredients, Inc., Kerry Ingredients, Inc., and Kerry Group PLC respectfully request that this action be removed to the United States District Court for the Eastern District of Pennsylvania

Dated: August 18, 2006

Respectfully submitted,

BY: _____

Gale White
David E. Edwards
WHITE AND WILLIAMS LLP
1800 One Liberty Place
Philadelphia, PA 19103-7395
215/864-7000
*Attorneys for Defendants, Kerry Inc,
f/k/a Kerry Ingredients, Inc., Kerry
Ingredients, Inc. and Kerry Group PLC*

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KWABENA ASANTE,
Plaintiff,

v.

DCA FOOD INDUSTRIES, INC.,
KERRY INC, f/k/a KERRY INGREDIENTS,
INC.,
KERRY INGREDIENTS, INC.,
KERRY GROUP PLC,
MOLINE MACHINERY, LTD., LP t/a MOLINE
MACHINERY,
MOLINE MACHINERY, LTD., IC-DISC t/a
MOLINE MACHINERY,
J. LYONS & CO.,
J. LYONS & CO., INC.,
ALLIED LYONS PLC,
ALLIED DOMEQ NORTH AMERICAN
CORPORATION,
ALLIED DOMEQ SPIRITS AND WINE USA,
ALLIED DOMEQ PLC,
PERNOD-RICARD USA, LLC,
PERNOD RICARD SA,
and
THE PILLSBURY COMPANY,
Defendants

CIVIL ACTION NO.

VERIFICATION

David E. Edwards, hereby states that he is an attorney for the defendants Kerry Inc., f/k/a Kerry Ingredients, Inc., Kerry Ingredients, Inc., and Kerry Group PLC, in the within action and verifies that the statements made in the foregoing Notice of Removal are true and correct to the best of his knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. Cons. Stat. Ann. § 4904 relating to unsworn falsification to authorities.

Dated: August , 2006

David E. Edwards

FURTHER, take notice that the defendants Kerry Inc. *f/k/a* Kerry Ingredients, Inc., Kerry Ingredients, Inc., and Kerry Group PLC have at the same time filed with the United States District Court for the Eastern District of Pennsylvania a copy of the Complaint served upon them and which was filed and entered in the Court of Common Pleas of Philadelphia County. A copy of said Notice of Removal is attached to this Notice and is hereby served upon you.

WHITE AND WILLIAMS LLP

BY: _____

Gale White
David E. Edwards
1800 One Liberty Place
Philadelphia, PA 19103-7395
215/864-7000
*Attorneys for Defendants Kerry Inc,
f/k/a Kerry Ingredients, Inc.,
Kerry Ingredients, Inc. and Kerry Group PLC*

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KWABENA ASANTE,
Plaintiff,

v.

DCA FOOD INDUSTRIES, INC.,
KERRY INC, f/k/a KERRY INGREDIENTS,
INC.,
KERRY INGREDIENTS, INC.,
KERRY GROUP PLC,
MOLINE MACHINERY, LTD., LP t/a MOLINE
MACHINERY,
MOLINE MACHINERY, LTD., IC-DISC t/a
MOLINE MACHINERY,
J. LYONS & CO.,
J. LYONS & CO., INC.,
ALLIED LYONS PLC,
ALLIED DOMEQ NORTH AMERICAN
CORPORATION,
ALLIED DOMEQ SPIRITS AND WINE USA,
ALLIED DOMEQ PLC,
PERNOD-RICARD USA, LLC,
PERNOD RICARD SA,
and
THE PILLSBURY COMPANY,
Defendants.

CIVIL ACTION NO.

PROOF OF FILING

To: THE CLERK

David E. Edwards, hereby certifies that a copy of the foregoing Notice of Removal will be filed with the Prothonotary of the Philadelphia County Court of Common Pleas immediately upon receipt of the certified copy from the United States District Court for the Eastern District of Pennsylvania.

Dated: August 18, 2006

David E. Edwards

EXHIBIT A

MAJOR JURY MATTER

ASSESSMENT OF DAMAGES
HEARING NOT REQUIRED.

GEORGE F. SCHOENER, JR., P.C.
By: George F. Schoener, Jr., Esquire
I.D. No.: 28644
8 Penn Center, Suite 1301
1628 John F. Kennedy Blvd.
Philadelphia, PA 19103-2199
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(215) 564-9147 -- Telephone
(215) 564-9187 -- Facsimile

Attorney for Plaintiff:
Kwabena Asante

KWABENA ASANTE
9601 Ashton Road
Apartment N2
Philadelphia, PA 19114,

PLAINTIFF,

vs.

DCA FOOD INDUSTRIES, INC.
P.O. Box 368
8106 Stayton Drive
Jessup, Maryland 20794,

and

KERRY INC. f/k/a KERRY INGREDIENTS, INC.
100 E. Grand Avenue
Beloit, Wisconsin 53511,

and

KERRY INGREDIENTS, INC.
100 E. Grand Avenue
Beloit, Wisconsin 53511,

and

KERRY GROUP PLC
Prince's Street,
Tralee, County Kerry
Ireland,

and

COURT OF COMMON PLEAS

PHILADELPHIA COUNTY, PA

JULY TERM, 2006

NO. 586

FILED
JUL 11 2006
J. BUCCHIO

2006 JUN 10 PM 3:02

MOLINE MACHINERY, LTD., LP t/a
MOLINE MACHINERY
302 W. Superior Street.
700 Lonsdale Building
Duluth, MN 55807,

and

MOLINE MACHINERY, LTD., IC-DISC t/a
MOLINE MACHINERY
114 S. Central Avenue
Duluth, MN 55802,

and

MOLINE MACHINERY
P.O. Box 16308
Duluth, MN 55816-0308,

and

J. LYONS & CO.
Bedminster Down
The Pavilions, Bridgewater Road
Bristol, BS13 8 AR United Kingdom,

and

J. LYONS & CO. INC.
270 W. 17th Street, Apt. 18B
New York, NY 10011,

and

ALLIED LYONS PLC
Bedminster Down
The Pavilions Bridgewater Road
Bristol, BS13 8 AR United Kingdom,

and

ALLIED DOMEQ NORTH AMERICAN
CORPORATION
355 Riverside Avenue
Westport, CT 06880-4810,

and

ALLIED DOMECQ SPIRITS AND WINE USA:
C/O CT Corporation System
111 Eighth Avenue
New York, NY 10011,

and

ALLIED DOMECQ PLC
Bedminster Down
The Pavilions Bridgewater Road
Bristol, BS13 8 AR United Kingdom,

and

PERNOD-RICARD USA, LLC
77 Westchester Avenue
White Plains, NY 10604,

and

PERNOD RICARD SA
12 Place Des Estats Unis
Paris, Cedex 7578316
France,

and

THE PILLSBURY COMPANY
405 2nd Avenue S.
Minneapolis, MN 55401

DEFENDANTS.

COMPLAINT – CIVIL ACTION LAW
Products Liability No. 26030

NOTICE TO DEFEND

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE, IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERENCE SERVICE:

Philadelphia Bar Association
Lawyer Referral and Information Service
One Reading Center
Philadelphia, Pennsylvania 19107
Telephone: (215) 238-1701

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademias, la corte puede decidir a favor del demandante y requiere usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO IMMEDIATAMENTE. SI USTED NO TIENE ABOGADO,(O NO TIENE DINERO SUFICIENTE PARA PAGAR A UN ABOGADO), VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL. ESTA OFICINA PUEDE PROVEER DE USTED LA INFORMACIÓN SOBRE EMPLEAR A un ABOGADO. SI USTED NO PUEDE PERMITIRSE A un ABOGADO, ESTA OFICINA PUEDE PODER PROVEER DE USTED LA INFORMACIÓN SOBRE LAS AGENCIAS QUE LOS SERVICIOS JURÍDICOS de la OFERTA de MAYO A LAS PERSONAS ELEGIBLES EN Un HONORARIO REDUCIDO O NINGÚN HONORARIO.

SERVICIO DE REFERENCIA LEGAL:

Asociacion De Licenciados De Filadelfia,
Servicio De Referencia E Informacion Legal,
One Reading Center
Filadelfia, Pennsylvania 19107
Telefono: (215) 238-1701

COMPLAINT

Plaintiff, Kwabena Asante, by and through his attorney, George F. Schoener, Jr., Esquire, hereby makes a claim for damages against the defendants and, in support thereof, avers the following:

1. Plaintiff, Kwabena Asante, is an adult individual residing in the Commonwealth of Pennsylvania at the above address.

2. Defendant, DCA Food Industries, Inc. is a corporation organized under the laws of Delaware with a principal place of business at the above address.

3. At all times mentioned herein and material hereto, defendant DCA Food Industries, Inc., (hereinafter also referred to as "DCA"), regularly conducted business in Philadelphia County.

4. At all material times hereto, defendant DCA acted through its agents, servants, workmen, employees and those who appeared to be such, who were acting within the course and scope of their employment.

5. Defendant, DCA designed, manufactured, assembled, distributed and sold a dough metering machine ("product" alternatively "equipment"), Model MD123F18, Serial 111 which plaintiff was cleaning at the time of the accident which will be described hereinafter.

6. At some point in time prior to or after the subject product was manufactured, defendant DCA was purchased by defendant J. Lyons & Co. an international corporation conducting business in Philadelphia County and throughout the United States as defendant J. Lyons & Co. Inc, entities that in or about 1978 were acquired by Allied Breweries, Inc. to form defendant Allied Lyons, PLC, a United Kingdom-based multi-national corporation that

in or about 1995 changed its name to defendant Allied Domecq PLC, an entity that conducted business in Philadelphia County as defendant subsidiaries Allied Domecq North American Corp and Allied Domecq Spirits and Wine Ltd, entities that in turn were acquired in or about July 2005 by defendant Pernod Ricard SA, a multinational corporation conducting business in Philadelphia County as defendant Pernod Ricard USA, Inc.

7. Defendants J. Lyons & Co., J. Lyons & Co. Inc., Allied-Lyons PLC, Allied-Domecq PLC, Allied Domecq North American Corp. Allied Domecq Spirits and Wine Ltd, Pernod Ricard SA and Pernod Ricard USA, Inc.,—collectively referred to as the “Allied Domecq defendants”—assumed all responsibility for products manufactured by DCA prior to or subsequent to its acquisition.

8. In or about 1994 defendant Allied Domecq PLC sold DCA to defendant Kerry Ingredients, Inc., presently known as defendant Kerry Inc., a Wisconsin based wholly owned subsidiary of multi-national corporate defendant Kerry Group PLC, collectively referred to hereinafter as “the Kerry defendants.”

9. The Kerry defendants assumed all responsibility for products manufactured by DCA prior to or subsequent to its acquisition.

10. In or about 1996 defendant Moline Machinery—acting through defendant Moline Machinery, Ltd., LP, a Minnesota limited partnership and/or Moline Machinery Ltd., IC-DISC, a Minnesota corporation, collectively referred to as the “Moline Machinery defendants”—purchased the DCA industrial equipment line from defendant Kerry Ingredients, Inc., thereby acquiring the equipment marketing rights and assuming the responsibility for products manufactured prior to the acquisition, including the responsibility for servicing existing DCA installations.

11. Before the subject accident, the Moline Machinery defendants published a safety-first document on the Internet which covered safety design for Moline Machinery equipment. A true and correct copy of this safety design booklet is attached hereto as Exhibit "A."

12. In or about 2000, the Kerry defendants sold the DCA bakery business to defendant Pillsbury Company, a Delaware corporation that assumed successor liability for the actions or inactions of defendant DCA prior to its acquisition.

13. At all material times hereto, all defendants regularly conducted business in Philadelphia County.

14. At all material times hereto, all defendants acted through their agents, servants, workmen, employees and those who appeared to be such, who were acting within the course and scope of their employment.

15. On or about July 8, 2004, plaintiff Kwabena Asante, was an employee at Interstate Brands Corp. located at 9801 Blue Grass Road, Philadelphia, PA 19114-1002 working in the cake department.

16. On July 8, 2004, plaintiff was performing his job duties cleaning said dough metering machine when his fingers inadvertently entered a vent causing the dough divider to cut fingers of his right hand (right index to the small finger) resulting in partial amputation.

17. The above accident occurred because the dough divider was defective.

18. Defendant DCA's dough divider machine was defectively designed by failing to properly and safely incorporate safeguarding to protect the user from sheer hazard accessible through the open vent.

19. It was technically and economically feasible to guard the hazardous condition of the vent configuration by placing a grate over the vent to prevent access to the hazard during cleaning.

20. There were no specific warnings on the machine advising the user of the existence of the sheer hazard accessible through the open vent.

21. The subject dough metering machine was also defective because it failed to have adequate and safe instructions and warnings pertaining to the safe use of the product and the sheer hazard presented.

22. Defendant, DCA, failed to publish adequate directions, warnings or safety instructions regarding use of the dough divider.

23. Defendant, DCA's failure to publish adequate warnings, safeguards, instructions or directions for the safe use of the dough divider was a substantial factor in causing said plaintiff's injuries.

24. After acquiring the subject DCA product line, the Allied Domecq defendants failed to contact owners of the DCA equipment regarding the unsafe equipment design and the unreasonable risk of harm to which equipment users would be exposed.

25. The Allied Domecq defendants failed to evaluate or inspect the machine involved in this case and permitted the equipment to be used despite its defective nature.

26. After acquiring the subject DCA product line, the Kerry defendants failed to contact owners of the DCA equipment regarding the unsafe equipment design and the unreasonable risk of harm to which equipment users would be exposed

27. The Kerry defendants failed to evaluate or inspect the machine involved in this case and permitted the equipment to be used despite its defective nature.

28. The Moline Machinery defendants purchased the subject product line from the Kerry defendants and failed to contact owners of the DCA equipment regarding the unsafe equipment design and the unreasonable risk of harm to which equipment users would be exposed.

29. The Moline Machinery defendants failed to evaluate or inspect the machine involved in this case and permitted the equipment to be used despite its defective nature.

30. Defendant Pillsbury Company purchased the DCA bakery products line from and failed to contact owners of the DCA equipment regarding the unsafe equipment design and the unreasonable risk of harm to which equipment users would be exposed.

31. Defendant Pillsbury Company failed to evaluate or inspect the machine involved in this case and permitted the equipment to be used despite its defective nature.

32. Subsequent to the subject accident, a safety device was installed on the subject product which would have prevented and will prevent the type of injury that the plaintiff sustained.

33. Defendants had the technology before the date of the accident to retrofit the subject machine yet failed to do so.

34. The injuries sustained by the plaintiff, as described below, were solely caused by the negligence, carelessness and recklessness of the defendants, their violation of Section 402 A (Second) and warranty law as applicable under Pennsylvania law.

COUNT I
(Plaintiff v. Defendant DCA)
Negligence

35. Plaintiff incorporates by reference paragraphs one (1) through thirty-four (34) of this complaint as if fully set forth at length herein.

36. The injuries sustained by plaintiff were proximately caused by the negligence, carelessness and recklessness of defendant DCA as follows:

- a. designing, manufacturing, distributing and selling the subject product without a limit switch in place to interrupt power to the machine while being cleaned;
- b. designing, manufacturing, distributing and selling the subject product without a proper electrical magnetic limit switch or other device to prevent the accident;
- c. designing, manufacturing, distributing and selling the subject product so as to permit the creation of a hazard while attempting to clean the machine;
- d. designing, manufacturing, distributing and selling the subject product so as to permit the hands of a worker to come into contact with a moving part of the machine while attempting to clean it;
- e. designing, manufacturing, distributing and selling the subject product without a block to prevent the subject injury;
- f. designing, manufacturing, distributing and selling the subject product without a limit switch in place to interrupt power in the event of contact with moving machinery;
- g. failing to design, manufacture, distribute and sell the subject product with a blocking device to prevent the contact between moving parts in the subject machine and the user of the equipment;
- h. failing to properly test the subject product;
- i. failing to properly warn users, such as the plaintiff, of the dangers involved in operating the subject equipment;

- j. failing to recall or otherwise warn about defects in the subject product leading to the hazard of contact with a moving part during the cleaning process;
- k. failing to provide adequate warnings and/or instructional materials;
- l. designing, manufacturing, distributing and selling product modifications after the sale in this case but before the date of the incident, and not notifying prior purchasers of the availability of these modifications, said modifications including switching and safety devices to prevent an incident such as occurred in the instant case;
- m. failing to retrofit the subject product prior to the accident, said retrofit involving, other modifications, a limit switch and or other means to protect the user of the product from contact with moving parts while cleaning the machine;
- n. failing to provide a post-sale warning about product defects;
- o. failing to adequately track the identity of the purchasers of the subject product;
- p. failing to notify purchasers of design changes after the initial sales;
- q. exposing plaintiff to reasonably foreseeable injuries;
- r. failing to adhere to proper safety engineering practices;
- s. violating the rules, regulations and guidelines of the subject industry.

37. As a proximate result of the aforementioned incident caused by the defendants, the plaintiff has suffered catastrophic and permanent injuries, including, but not limited to, the loss of a significant portion of four fingers from his right hand, cosmetic scarring and disfigurement, damage to his nerves and nervous system and various other ills and illnesses.

38. As a further result of the aforementioned incident caused by the defendants, the plaintiff has suffered severe physical pain, mental anguish and humiliation and will continue

to suffer same for an indefinite time into the future. He has been and in the future will be unable to attend to his usual duties and occupation.

39. As a further result of the aforementioned incident caused by the defendants, the plaintiff has suffered severe physical pain, mental anguish and humiliation and will continue to suffer same for an indefinite time into the future. He has been and in the future will be unable to attend to his usual duties and occupation.

40. As a further result of the aforementioned incident caused by the defendants, the plaintiff has suffered cosmetic scarring and disfigurement.

41. As a further result of the aforementioned incident caused by defendants, plaintiff has received, and may continue to receive, surgical and medical care for his injuries, and has incurred and will continue to incur substantial expenses.

42. As a further result of the aforementioned incident caused by the defendants, plaintiff has been and will be deprived of the ability to enjoy life and the full use of his faculties to the extent that he was able to enjoy same prior to the events herein described.

43. As a further result of the aforementioned incident caused by the defendants, the plaintiff has suffered a loss of earnings and earning capacity.

44. As a further result of the aforementioned incident caused by the defendants, the plaintiff has become disabled.

WHEREFORE, plaintiff demands judgment against defendant, DCA, for a sum in excess of Fifty Thousand Dollars (\$50,000.00) along with delay damages, interest and costs.

COUNT II
(Plaintiff v. The Allied Domecq Defendants)
Negligence

45. Plaintiff incorporates by reference paragraphs one (1) through forty-four (44) of this complaint as if fully set forth at length herein.

46. The injuries sustained by plaintiff were proximately caused by the negligence, carelessness and recklessness of the Allied Domecq defendants as follows

- a. designing, manufacturing, distributing and selling the subject product without a limit switch in place to interrupt power to the machine while being cleaned;
- b. designing, manufacturing, distributing and selling the subject product without a proper electrical magnetic limit switch or other device to prevent the accident;
- c. designing, manufacturing, distributing and selling the subject product so as to permit the creation of a hazard while attempting to clean the machine;
- d. designing, manufacturing, distributing and selling the subject product so as to permit the hands of a worker to come into contact with a moving part of the machine while attempting to clean it;
- e. designing, manufacturing, distributing and selling the subject product without a block to prevent the subject injury;
- f. designing, manufacturing, distributing and selling the subject product without a limit switch in place to interrupt power in the event of contact with moving machinery;
- g. failing to design, manufacture, distribute and sell the subject product with a blocking device to prevent the contact between moving parts in the subject machine and the user of the equipment;
- h. failing to properly test the subject product;
- i. failing to properly warn users, such as the plaintiff, of the dangers involved in operating the subject equipment;

- j. failing to recall or otherwise warn about defects in the subject product leading to the hazard of contact with a moving part during the cleaning process;
- k. failing to provide adequate warnings and/or instructional materials;
- l. designing, manufacturing, distributing and selling product modifications after the sale in this case but before the date of the incident, and not notifying prior purchasers of the availability of these modifications, said modifications including switching and safety devices to prevent an incident such as occurred in the instant case;
- m. failing to retrofit the subject product prior to the accident, said retrofit involving, other modifications, a limit switch and or other means to protect the user of the product from contact with moving parts while cleaning the machine;
- n. failing to provide a post-sale warning about product defects;
- o. failing to adequately track the identity of the purchasers of the subject product;
- p. failing to notify purchasers of design changes after the initial sales;
- q. exposing plaintiff to reasonably foreseeable injuries;
- r. failing to adhere to proper safety engineering practices;
- s. violating the rules, regulations and guidelines of the subject industry;
- t. subsequent purchaser liability;
- u. product line liability.

WHEREFORE, plaintiff demands judgment against the Allied Domecq defendants, J. Lyons & Co.; J. Lyons & Co. Inc.; Allied-Lyons PLC; Allied-Domecq PLC; Allied Domecq North American Corp.; Allied Domecq Spirits and Wine Ltd.; Pernod Ricard SA; Pernod

Ricard USA, Inc., for a sum in excess of Fifty Thousand Dollars (\$50,000.00) along with delay damages, interest and costs.

COUNT III
(Plaintiff v. The Kerry Defendants)
Negligence

47. Plaintiff incorporates by reference paragraphs one (1) through forty-six (46) of this Complaint as if fully set forth at length herein.

48. The injuries sustained by plaintiff were proximately caused by the negligence, carelessness and recklessness of the Kerry defendants as follows:

- a. designing, manufacturing, distributing and selling the subject product without a limit switch in place to interrupt power to the machine while being cleaned;
- b. designing, manufacturing, distributing and selling the subject product without a proper electrical magnetic limit switch or other device to prevent the accident;
- c. designing, manufacturing, distributing and selling the subject product so as to permit the creation of a hazard while attempting to clean the machine;
- d. designing, manufacturing, distributing and selling the subject product so as to permit the hands of a worker to come into contact with a moving part of the machine while attempting to clean it;
- e. designing, manufacturing, distributing and selling the subject product without a block to prevent the subject injury;
- f. designing, manufacturing, distributing and selling the subject product without a limit switch in place to interrupt power in the event of contact with moving machinery;
- g. failing to design, manufacture, distribute and sell the subject product with a blocking device to prevent the contact between moving parts in the subject machine and the user of the equipment;

- h. failing to properly test the subject product;
- i. failing to properly warn users, such as the plaintiff, of the dangers involved in operating the subject equipment;
- j. failing to recall or otherwise warn about defects in the subject product leading to the hazard of contact with a moving part during the cleaning process;
- k. failing to provide adequate warnings and/or instructional materials;
- l. designing, manufacturing, distributing and selling product modifications after the sale in this case but before the date of the incident, and not notifying prior purchasers of the availability of these modifications, said modifications including switching and safety devices to prevent an incident such as occurred in the instant case;
- m. failing to retrofit the subject product prior to the accident, said retrofit involving, other modifications, a limit switch and or other means to protect the user of the product from contact with moving parts while cleaning the machine;
- n. failing to provide a post-sale warning about product defects;
- o. failing to adequately track the identity of the purchasers of the subject product;
- p. failing to notify purchasers of design changes after the initial sales;
- q. exposing plaintiff to reasonably foreseeable injuries;
- r. failing to adhere to proper safety engineering practices;
- s. violating the rules, regulations and guidelines of the subject industry
- t. subsequent purchaser liability;
- u. product line liability.

WHEREFORE, plaintiff demands judgment against the Kerry defendants, Kerry Inc., f/k/a Kerry Ingredients, Inc; Kerry Ingredients, Inc.; the Kerry Group, PLC; for a sum in excess of Fifty Thousand Dollars (\$50,000.00) along with delay damages, interest and costs.

COUNT IV
(Plaintiff v. Moline Machinery Defendants)
Negligence

49. Plaintiff incorporates by reference paragraphs one (1) through forty-eight (48) of this Complaint as if fully set forth at length herein.

50. The injuries sustained by plaintiff were proximately caused by the negligence, carelessness and recklessness of the Moline Machinery defendants as follows:

- a. designing, manufacturing, distributing and selling the subject product without a limit switch in place to interrupt power to the machine while being cleaned;
- b. designing, manufacturing, distributing and selling the subject product without a proper electrical magnetic limit switch or other device to prevent the accident;
- c. designing, manufacturing, distributing and selling the subject product so as to permit the creation of a hazard while attempting to clean the machine;
- d. designing, manufacturing, distributing and selling the subject product so as to permit the hands of a worker to come into contact with a moving part of the machine while attempting to clean it;
- e. designing, manufacturing, distributing and selling the subject product without a block to prevent the subject injury;
- f. designing, manufacturing, distributing and selling the subject product without a limit switch in place to interrupt power in the event of contact with moving machinery;
- g. failing to design, manufacture, distribute and sell the subject product with a blocking device to prevent the contact

between moving parts in the subject machine and the user of the equipment;

- h. failing to properly test the subject product;
- i. failing to properly warn users, such as the plaintiff, of the dangers involved in operating the subject equipment;
- j. failing to recall or otherwise warn about defects in the subject product leading to the hazard of contact with a moving part during the cleaning process;
- k. failing to provide adequate warnings and/or instructional materials;
- l. designing, manufacturing, distributing and selling product modifications after the sale in this case but before the date of the incident, and not notifying prior purchasers of the availability of these modifications, said modifications including switching and safety devices to prevent an incident such as occurred in the instant case;
- m. failing to retrofit the subject product prior to the accident, said retrofit involving, other modifications, a limit switch and or other means to protect the user of the product from contact with moving parts while cleaning the machine;
- n. failing to provide a post-sale warning about product defects;
- o. failing to adequately track the identity of the purchasers of the subject product;
- p. failing to notify purchasers of design changes after the initial sales;
- q. exposing plaintiff to reasonably foreseeable injuries;
- r. failing to adhere to proper safety engineering practices;
- s. violating the rules, regulations and guidelines of the subject industry;
- t. subsequent purchaser liability;
- u. product line liability.

WHEREFORE, plaintiff demands judgment against the Moline Machinery defendants, Moline Machinery, Moline Machinery Ltd., LP, Moline Machinery Ltd., IC-DISC, for a sum in excess of Fifty Thousand Dollars (\$50,000.00) along with delay damages, interest and costs.

COUNT V
(Plaintiff v. Defendant Pillsbury Company)
Negligence

51. Plaintiff incorporates by reference paragraphs one (1) through fifty (50) of this Complaint as if fully set forth at length herein.

52. The injuries sustained by plaintiff were proximately caused by the negligence, carelessness and recklessness of defendant Pillsbury Company as follows:

- a. designing, manufacturing, distributing and selling the subject product without a limit switch in place to interrupt power to the machine while being cleaned;
- b. designing, manufacturing, distributing and selling the subject product without a proper electrical magnetic limit switch or other device to prevent the accident;
- c. designing, manufacturing, distributing and selling the subject product so as to permit the creation of a hazard while attempting to clean the machine;
- d. designing, manufacturing, distributing and selling the subject product so as to permit the hands of a worker to come into contact with a moving part of the machine while attempting to clean it;
- e. designing, manufacturing, distributing and selling the subject product without a block to prevent the subject injury;

- f. designing, manufacturing, distributing and selling the subject product without a limit switch in place to interrupt power in the event of contact with moving machinery;
- g. failing to design, manufacture, distribute and sell the subject product with a blocking device to prevent the contact between moving parts in the subject machine and the user of the equipment;
- h. failing to properly test the subject product;
- i. failing to properly warn users, such as the plaintiff, of the dangers involved in operating the subject equipment;
- j. failing to recall or otherwise warn about defects in the subject product leading to the hazard of contact with a moving part during the cleaning process;
- k. failing to provide adequate warnings and/or instructional materials;
- l. designing, manufacturing, distributing and selling product modifications after the sale in this case but before the date of the incident, and not notifying prior purchasers of the availability of these modifications, said modifications including switching and safety devices to prevent an incident such as occurred in the instant case;
- m. failing to retrofit the subject product prior to the accident, said retrofit involving, other modifications, a limit switch and or other means to protect the user of the product from contact with moving parts while cleaning the machine;
- n. failing to provide a post-sale warning about product defects;
- o. failing to adequately track the identity of the purchasers of the subject product;
- p. failing to notify purchasers of design changes after the initial sales;
- q. exposing plaintiff to reasonably foreseeable injuries;
- r. failing to adhere to proper safety engineering practices;

- s. violating the rules, regulations and guidelines of the subject industry
- t. subsequent purchaser liability;
- u. product line liability.

WHEREFORE, plaintiff demands judgment against defendant, Pillsbury Company, for a sum in excess of Fifty Thousand Dollars (\$50,000.00) along with delay damages, interest and costs.

COUNT VI
(Plaintiff v. DCA)
§ 402 A

53. Plaintiff incorporates by reference paragraphs one (1) through fifty-two (52) of this Complaint as if fully set forth at length herein.

54. Defendant DCA did design, manufacture, distribute and sell the aforementioned product and/or acquired the product line, knowing of its ultimate use by persons such as the person involved herein, which was defective and/or poorly designed and/or lacked the proper warnings or instructions, and was in such a condition as to be unreasonably dangerous to the ultimate user and others, at the time of its sale.

55. Defendant DCA also caused the plaintiff's injuries by failing, inter alia, to issue a post-sale, pre-incident warning or recall.

56. Plaintiff's injuries, as outlined above, were caused by the defects present in the subject product, pursuant to § 402 A of the Restatement (2nd) of Torts.

WHEREFORE, plaintiff demands judgment against defendant, DCA, for a sum in excess of Fifty Thousand Dollars (\$50,000.00) along with delay damages, interest and costs.

COUNT VII
(Plaintiff v. The Allied-Domecq Defendants)
§ 402 A

57. Plaintiff incorporates by reference paragraphs one (1) through fifty-six (56) of this Complaint as if fully set forth at length herein.

58. The Allied Domecq defendants did design, manufacture, distribute and sell the aforementioned product and/or acquired the product line, knowing of its ultimate use by persons such as the person involved herein, which was defective and/or poorly designed and/or lacked the proper warnings or instructions, and was in such a condition as to be unreasonably dangerous to the ultimate user and others, at the time of its sale.

59. The Allied Domecq defendants also caused the plaintiff's injuries by failing, inter alia, to issue a post-sale, pre-incident warning or recall.

60. Plaintiff's injuries, as outlined above, were caused by the defects present in the subject product, pursuant to § 402 A of the Restatement (2nd) of Torts.

WHEREFORE, plaintiff demands judgment against the Allied Domecq defendants, J. Lyons & Co.; J. Lyons & Co. Inc.; Allied-Lyons PLC; Allied-Domecq PLC; Allied Domecq North American Corp.; Allied Domecq Spirits and Wine Ltd.; Pernod Ricard SA; Pernod Ricard USA, Inc., for a sum in excess of Fifty Thousand Dollars (\$50,000.00) along with delay damages, interest and costs.

COUNT VIII
(Plaintiff v. The Kerry Defendants)
§ 402 A

61. Plaintiff incorporates by reference paragraphs one (1) through sixty (60) of this Complaint as if fully set forth at length herein.

62. The Kerry defendants did design, manufacture, distribute and sell the aforementioned product and/or acquired the product line, knowing of its ultimate use by persons such as the person involved herein, which was defective and/or poorly designed and/or lacked the proper warnings or instructions, and was in such a condition as to be unreasonably dangerous to the ultimate user and others, at the time of its sale.

63. The Kerry defendants also caused the plaintiff's injuries by failing, inter alia, to issue a post-sale, pre-incident warning or recall.

64. Plaintiff's injuries, as outlined above, were caused by the defects present in the subject product, pursuant to § 402 A of the Restatement (2nd) of Torts.

WHEREFORE, plaintiff demands judgment against the Kerry defendants, Kerry Inc.; f/k/a Kerry Ingredients; Inc; Kerry Ingredients, Inc.; the Kerry Group, PLC; for a sum in excess of Fifty Thousand Dollars (\$50,000.00) along with delay damages, interest and costs.

COUNT IX
(Plaintiff v. The Moline Machinery Defendants)
§ 402 A

65. Plaintiff incorporates by reference paragraphs one (1) through sixty-four (64) of this Complaint as if fully set forth at length herein.

66. The Moline Machinery defendants did design, manufacture, distribute and sell the aforementioned product and/or acquired the product line, knowing of its ultimate use by persons such as the person involved herein, which was defective and/or poorly designed and/or lacked the proper warnings or instructions, and was in such a condition as to be unreasonably dangerous to the ultimate user and others, at the time of its sale.

67. The Moline Machinery defendants also caused the plaintiff's injuries by failing, inter alia, to issue a post-sale, pre-incident warning or recall.

68. Plaintiff's injuries, as outlined above, were caused by the defects present in the subject product, pursuant to § 402 A of the Restatement (2nd) of Torts.

WHEREFORE, plaintiff demands judgment against the Moline Machinery defendants, Moline Machinery, Moline Machinery Ltd., LP, Moline Machinery Ltd., IC-DISC, for a sum in excess of Fifty Thousand Dollars (\$50,000.00) along with delay damages, interest and costs.

COUNT X
(Plaintiff v. The Pillsbury Company)
§ 402 A

69. Plaintiff incorporates by reference paragraphs one (1) through sixty-eight (68) of this Complaint as if fully set forth at length herein.

70. Defendant The Pillsbury Company did design, manufacture, distribute and sell the aforementioned product, knowing of its ultimate use by persons such as the person involved herein, which was defective and/or poorly designed and/or lacked the proper warnings or instructions, and was in such a condition as to be unreasonably dangerous to the ultimate user and others, at the time of its sale.

71. Defendant The Pillsbury Company also caused the plaintiff's injuries by failing, inter alia, to issue a post-sale, pre-incident warning or recall.

72. Plaintiff's injuries, as outlined above, were caused by the defects present in the subject product, pursuant to § 402 A of the Restatement (2nd) of Torts.

WHEREFORE. plaintiff demands judgment against defendant, The Pillsbury Company, for a sum in excess of Fifty Thousand Dollars (\$50,000.00) along with delay damages, interest and costs.

COUNT XI
(Plaintiff v. DCA)
Breach of Warranty

73. Plaintiff incorporates by reference paragraphs one (1) through seventy-two (72) of this complaint as if fully set forth at length herein.

74. Plaintiff's catastrophic injuries were proximately caused by defendant DCA's breach of warranty for particular purpose merchantability and other express and implied warranties pursuant to the Uniform Commercial Code and the common law.

75. Plaintiff's injuries, as outlined above, were caused by the aforementioned breach of warranty

WHEREFORE, plaintiff demands judgment against defendant, DCA, for a sum in excess of Fifty Thousand Dollars (\$50,000.00) along with delay damages, interest and costs.

COUNT XII
(Plaintiff v. The Allied Domecq Defendants)
Breach of Warranty

76. Plaintiff incorporates by reference paragraphs one (1) through seventy-five (75) of this complaint as if fully set forth at length herein.

77. Plaintiff's catastrophic injuries were proximately caused by the Allied Domecq defendants' breach of warranty for particular purpose merchantability and other express and implied warranties pursuant to the Uniform Commercial Code and the common law.

78. Plaintiff's injuries, as outlined above, were caused by the aforementioned breach of warranty

WHEREFORE, plaintiff demands judgment against the Allied Domecq defendants, J. Lyons & Co.; J. Lyons & Co. Inc.; Allied-Lyons PLC; Allied-Domecq PLC; Allied Domecq North American Corp.; Allied Domecq Spirits and Wine Ltd.; Pernod Ricard SA; Pernod Ricard USA, Inc., for a sum in excess of Fifty Thousand Dollars (\$50,000.00) along with delay damages, interest and costs.

COUNT XIII
(Plaintiff v. The Kerry Defendants)
Breach of Warranty

79. Plaintiff incorporates by reference paragraphs one (1) through seventy-eight (78) of this complaint as if fully set forth at length herein.

80. Plaintiff's catastrophic injuries were proximately caused by the Kerry defendants' breach of warranty for particular purpose merchantability and other express and implied warranties pursuant to the Uniform Commercial Code and the common law.

81. Plaintiff's injuries, as outlined above, were caused by the aforementioned breach of warranty

WHEREFORE, plaintiff demands judgment against the Kerry defendants, Kerry Inc., f/k/a Kerry Ingredients, Inc; Kerry Ingredients, Inc.; the Kerry Group, PLC; for a sum in excess of Fifty Thousand Dollars (\$50,000.00) along with delay damages, interest and costs.

COUNT XIV
(Plaintiff v. The Moline Machinery Defendants)
Breach of Warranty

82. Plaintiff incorporates by reference paragraphs one (1) through eighty-one (81) of this complaint as if fully set forth at length herein.

83. Plaintiff's catastrophic injuries were proximately caused by the Moline Machinery defendants' breach of warranty for particular purpose merchantability and other express and implied warranties pursuant to the Uniform Commercial Code and the common law.

84. Plaintiff's injuries, as outlined above, were caused by the aforementioned breach of warranty

WHEREFORE, plaintiff demands judgment against the Moline Machinery defendants, Moline Machinery, Moline Machinery Ltd., LP, Moline Machinery Ltd., IC-DISC, for a sum in excess of Fifty Thousand Dollars (\$50,000.00) along with delay damages, interest and costs.

COUNT XV
(Plaintiff v. The Pillsbury Company)
Breach of Warranty

85. Plaintiff incorporates by reference paragraphs one (1) through eighty-four (84) of this complaint as if fully set forth at length herein.

86. Plaintiff's catastrophic injuries were proximately caused by defendant The Pillsbury Company's breach of warranty for particular purpose merchantability and other express and implied warranties pursuant to the Uniform Commercial Code and the common law.

87. Plaintiff's injuries, as outlined above, were caused by the aforementioned breach of warranty

WHEREFORE, plaintiff demands judgment against defendant, The Pillsbury Company, for a sum in excess of Fifty Thousand Dollars (\$50,000.00) along with delay damages, interest and costs

GEORGE F. SCHOENER, JR., P.C.

George F. Schoener, Jr.
George F. Schoener, Jr., Esquire

Date: July 10, 2006

VERIFICATION

KWABENA ASANTE hereby states that he is the plaintiff in this action and verifies that the statements made in the foregoing COMPLAINT are true and correct to the best of his knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date: 7/10/06

AKWABENA
KWABENA ASANTE

EXHIBIT B

Civil Docket Report

Case Description

Case ID: 060700586
Case Caption: ASANTE VS DCA FOOD INDUSTRIES INC ETAL
Filing Date: Friday , July 07th, 2006
Court: JC - MAJOR JURY-COMPLEX
Location: CH - City Hall
Jury: J - JURY
Case Type: 2P - PRODUCT LIABILITY
Status: CLWCM - WAITING TO LIST CASE MGMT CONF

Related Cases

No related cases were found.

Case Event Schedule

No case events were found.

Case Parties

Seq #	Assoc	Expn Date	Type	ID	Name
1			ATTORNEY FOR PLAINTIFF	A28644	SCHOENER JR, GEORGE F
Address:	SUITE 1301 EIGHT PENN CENTER PLAZA 1628 JFK BLVD PHILADELPHIA PA 19103-2199 (215)564-9147		Aliases:	none	
2	1		PLAINTIFF	@5469802	ASANTE, KWABENA
Address:	9601 ASHTON ROAD APT N-2 PHILADELPHIA PA 19114		Aliases:	none	

3			DEFENDANT	@5469804	DCA FOOD INDUSTRIES INC
Address:	PO BOX 368 8106 STAYTON DRIVE JESSUP MD 20794		Aliases:	none	
4			DEFENDANT	@5469805	KERRY INC
Address:	100 EAST GRAND AVE BELOIT WI 53511		Aliases:	KERRY INGREDIENTS INC	
5			DEFENDANT	@5469811	KERRY INGREDIENTS INC
Address:	100 EAST GRAND AVE BELOIT WI 53511		Aliases:	none	
6			DEFENDANT	@5469812	KERRY GROUP PLC
Address:	PRINCE'S ST TRALEE COUNTY KERRY		Aliases:	none	
7			DEFENDANT	@5469815	MOLINE MACHINERY LTD LP
Address:	302 WEST SUPERIOR ST 700 LONSDALE BLDG DULUTH MN 55807		Aliases:	MOLINE MACHINERY	
8			DEFENDANT	@5469816	MOLINE MACHINERY LTD IC DISC
Address:	114 S CENTRAL AVE DULUTH MN 55802		Aliases:	MOLINE MACHINERY	
9			DEFENDANT	@5469819	MOLINE MACHINERY

Address:	PO BOX 16308 DULUTH MN 55816	Aliases:	none
10		DEFENDANT	@5469822 J LYONS&CO INC
Address:	BEDMINSTER DOWN PAVILIONS BRIDGEWATER RD BRISTOL BS13 8	Aliases:	none
11		DEFENDANT	@5469825 J LYONS&CO INC
Address:	270 WEST 17TH ST APT 18B NEW YORK NY 10011	Aliases:	none
12		DEFENDANT	@5469827 ALLIED LYONS PLC
Address:	BEDMINSTER DOWN THE PAVILIONS BRIDGEWATER RD BRISTOL BS 13 8	Aliases:	none
13		DEFENDANT	@5469832 ALLIED DOMEQ NORTH AMERICAN CORP
Address:	355 RIVERSIDE AVE SAUGATUCK CT 06880	Aliases:	none
14		DEFENDANT	@5469834 ALLIED DOMEQ SPIRITS&WINE USA
Address:	C/O CT CORP SYSTEM 111 EIGHT AVE NEW YORK NY 10011	Aliases:	none

15			DEFENDANT	@5469836	ALLIED DOMEQ PLC
Address:	BEDMINSTER DOWN THE PAVILIONS BRIDGEWATER RD BRISTOL BS 13 8		Aliases:	none	
16			DEFENDANT	@5469839	PERNOD RICARD SA
Address:	77 WESTCHESTER AVE EAST WHITE PLAINS NY 10604		Aliases:	none	
17			DEFENDANT	@5469840	PERNOD RICARD SA
Address:	12 PLACE DES ESTATS UNIS PARIS CEDEX 7578316		Aliases:	none	
18	20		DEFENDANT	@5469841	PILLSBURY CO
Address:	405 02ND AVE S MINNEAPOLIS MN 55401		Aliases:	none	
19			TEAM LEADER	J359	TERESHKO, ALLAN L
Address:	231 CITY HALL PHILADELPHIA PA 19107 (215)686-7324		Aliases:	none	
20			ATTORNEY FOR DEFENDANT	A41859	MCBRIDE, DENIS P
Address:	KENT & MCBRIDE 1617 JFK BLVD SUITE 1200 PHILADELPHIA PA 19107 (215)568-1800		Aliases:	none	

Docket Entries

Filing Date/Time	Docket Type	Filing Party	Disposition Amount
07-JUL-2006 11:29 AM	CIVIJ - COMMENCEMENT CIVIL ACTION JURY	SCHOENER JR, GEORGE F	
Docket Entry:	none.		
07-JUL-2006 11:29 AM	WRSUM - PRAE TO ISSUE WRIT OF SUMMONS	SCHOENER JR, GEORGE F	
Docket Entry:	PRAECIPE TO ISSUE WRIT OF SUMMONS FILED. WRIT OF SUMMONS ISSUED.		
07-JUL-2006 11:29 AM	SSC16 - SHERIFF'S SURCHARGE 16 DEFTS	SCHOENER JR, GEORGE F	
Docket Entry:	none.		
07-JUL-2006 11:29 AM	JURYT - JURY TRIAL PERFECTED	SCHOENER JR, GEORGE F	
Docket Entry:	none.		
07-JUL-2006 11:29 AM	CLWCM - WAITING TO LIST CASE MGMT CONF	SCHOENER JR, GEORGE F	
Docket Entry:	none.		
07-JUL-2006 03:35 PM	ACTIV - ACTIVE CASE		
Docket Entry:	none.		
10-JUL-2006 03:02 PM	CMPLT - COMPLAINT FILED NOTICE GIVEN	SCHOENER JR, GEORGE F	
Docket Entry:	COMPLAINT WITH NOTICE TO DEFEND WITHIN TWENTY (20) DAYS AFTER SERVICE IN ACCORDANCE WITH RULE 1018.1 FILED.		

28-JUL-2006 02:44 PM	AFDVT - AFFIDAVIT OF SERVICE FILED		
Docket Entry:	OF COMPLAINT AND SUMMONS BY PERSONAL SERVICE UPON DEFENDANT THE PILLSBURY CO C/O CT CORP ON 7/24/06.		
14-AUG-2006 04:04 PM	ENAJD - ENTRY OF APPEAR/JURY DEMAND	MCBRIDE, DENIS P	
Docket Entry:	ENTRY OF APPEARANCE OF DENIS MCBRIDE FILED ON BEHALF OF DFT THE PILLSBURY CO.		
14-AUG-2006 04:04 PM	ANCOM - ANSWER TO COMPLAINT FILED	MCBRIDE, DENIS P	
Docket Entry:	ANSWER TO PLAINTIFF'S COMPLAINT WITH NEW MATTER AND NEW MATTER 2252(D) AGAINST CO-DEFT(S) FILED BY DEFENDANT THE PILLSBURY CO.		

EXHIBIT C

COPY

KENT & McBRIDE, P.C.
By: DENIS P. McBRIDE, ESQUIRE
IDENTIFICATION NO. 41859
1617 JFK BOULEVARD
SUITE 1200
PHILADELPHIA, PA 19103
(215) 568-1800

ATTORNEY FOR DEFENDANT,
The Pillsbury Company

PRESENTED FOR REVIEW
06 AUG 14 PM 4:04
PRO PROTHY

443-73560

Kwabena Asante,

Plaintiff,

v.

The Pillsbury Company, et al.

Defendant.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

JULY TERM, 2006
NO.: 586

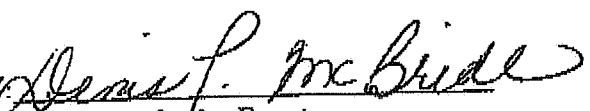
ENTRY OF APPEARANCE AND JURY TRIAL DEMAND

TO THE PROTHONOTARY:

Kindly enter my appearance on behalf of Defendant(s), The Pillsbury Company, in the above-captioned matter.

Defendant, The Pillsbury Company, by and through its attorneys, hereby demands a trial by jury.

KENT & McBRIDE, P.C.

BY: 
Denis P. McBride, Esquire
Attorney for Defendant,
The Pillsbury Company

COPY

KENT & McBRIDE, P.C.
By: DENIS P. McBRIDE, ESQUIRE
IDENTIFICATION NO. 41859
1617 JFK BOULEVARD
SUITE 1200
PHILADELPHIA, PA 19103
(215) 568-1800

ATTORNEY FOR DEFENDANT,
The Pillsbury Company

443-73560

Kwabena Asante,

Plaintiff,

v.

DCA Food Instrustries, Inc.; Kerry Inc. f/k/a
Kerry Ingredients, Inc.; Kerry Ingredients,
Inc.; Kerry Group PLC;
Moline Machinery, LTD LP t/a Moline
Machinery; Moline Machinery, LTD, IC-
DISC t/a Moline Machinery; Moline
Machinery; J. Lyons & Co.; J. Lyons & Co.,
Inc.; Allied Lyons, PLC; Allied Domecq
North American Corporation;
Allied Domecq Spirits and Wine USA;
Allied Domecq PLC; Pernod-Ricard USA,
LLC; Pernod Ricard SA; The Pillsbury
Company,

Defendants.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

JULY TERM, 2006
NO.: 586

PRESENTED FOR REVIEW
06 AUG 14 PM 4:04
PRO PROTHY

**ANSWER OF DEFENDANT, THE PILLSBURY COMPANY, TO
PLAINTIFF'S COMPLAINT WITH NEW MATTER AND NEW MATTER PURSUANT
TO RULE 2252(d) IN THE FORM OF CROSSCLAIM**

1.-11. Denied. After reasonable investigation, Answering Defendant Pillsbury lacks sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

12. Admitted in part. Denied in part. Answering Defendant Pillsbury, Pillsbury admits that it purchased a portion of the business entity known as DCA Food Industries, Inc. Defendant Pillsbury admits that it is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business in Minneapolis, Minnesota. However, Plaintiff's Complaint is unduly vague and indefinite as to his allegations regarding successor liability so as to preclude this Answering Defendant Pillsbury from determining the scope of liability to which Plaintiff refers and therefore denies same.

13. Admitted in part. Denied in part. Answering Defendant Pillsbury admits that it is a foreign corporation that does business within the State of Pennsylvania. However, Pillsbury lacks sufficient information or knowledge to form a belief as to the truth or accuracy of the allegations concerning the activities of other named Defendants and therefore denies same.

14. Denied. The averments contained in this paragraph state conclusions of law to which no answer is required. By way of further answer, however, after reasonable investigation, Answering Defendant Pillsbury lacks sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

15-16. Denied. After reasonable investigation, Answering Defendant Pillsbury lacks sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

17-21. Denied. The averments contained in this paragraph state conclusions of law to which no answer is required. By way of further answer, however, after reasonable investigation, Answering Defendant Pillsbury lacks sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

22-29. Denied. The averments contained in this paragraph refer to parties other than Answering Defendant Pillsbury, and, therefore, no answer is required.

30-34. Denied. The averments contained in this paragraph state conclusions of law to which no answer is required. By way of further answer, however, after reasonable investigation, Answering

Defendant Pillsbury lacks sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

COUNT I
(Plaintiff v. Defendant DCA)
Negligence

35. Answering Defendant Pillsbury incorporates by reference its answers to the Paragraphs in all previous Counts above as fully as though same were set forth herein at length.

36-44. Denied. The averments contained in this paragraph refer to parties other than Answering Defendant Pillsbury, and, therefore, no answer is required.

WHEREFORE, Answering Defendant Pillsbury(s) demands judgment in its favor and against Plaintiff together with costs, attorney's fees, and other relief as may be just and reasonable.

COUNT II
(Plaintiff v. The Allied Domecq Defendants)
Negligence

45. Answering Defendant Pillsbury incorporates by reference its answers to the Paragraphs in all previous Counts above as fully as though same were set forth herein at length.

46. Denied. The averments contained in this paragraph refer to parties other than Answering Defendant Pillsbury, and, therefore, no answer is required.

WHEREFORE, Answering Defendant Pillsbury(s) demands judgment in its favor and against Plaintiff together with costs, attorney's fees, and other relief as may be just and reasonable.

COUNT III
(Plaintiff v. The Kerry Defendants)
Negligence

47. Answering Defendant Pillsbury incorporates by reference its answers to the Paragraphs in all previous Counts above as fully as though same were set forth herein at length.

48. Denied. The averments contained in this paragraph refer to parties other than Answering Defendant Pillsbury, and, therefore, no answer is required.

WHEREFORE, Answering Defendant Pillsbury(s) demands judgment in its favor and against Plaintiff together with costs, attorney's fees, and other relief as may be just and reasonable.

COUNT IV
(Plaintiff v. Moline Machinery Defendants)
Negligence

49. Answering Defendant Pillsbury incorporates by reference its answers to the Paragraphs in all previous Counts above as fully as though same were set forth herein at length.

50. Denied. The averments contained in this paragraph refer to parties other than Answering Defendant Pillsbury, and, therefore, no answer is required.

WHEREFORE, Answering Defendant Pillsbury(s) demands judgment in its favor and against Plaintiff together with costs, attorney's fees, and other relief as may be just and reasonable.

COUNT V
(Plaintiff v. Defendant Pillsbury Company)
Negligence

51. Answering Defendant Pillsbury incorporates by reference its answers to the Paragraphs in all previous Counts above as fully as though same were set forth herein at length.

52. Denied. The averments contained in this paragraph state conclusions of law to which no answer is required. By way of further answer, however, after reasonable investigation, Answering Defendant Pillsbury lacks sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

WHEREFORE, Answering Defendant Pillsbury(s) demands judgment in its favor and against Plaintiff together with costs, attorney's fees, and other relief as may be just and reasonable.

COUNT VI
(Plaintiff v. DCA)
§ 402 A

53. Answering Defendant Pillsbury incorporates by reference its answers to the Paragraphs in all previous Counts above as fully as though same were set forth herein at length.

54-56. Denied. The averments contained in this paragraph refer to parties other than Answering Defendant Pillsbury, and, therefore, no answer is required.

WHEREFORE, Answering Defendant Pillsbury(s) demands judgment in its favor and against Plaintiff together with costs, attorney's fees, and other relief as may be just and reasonable.

COUNT VII
(Plaintiff v. The Allied-Domecq Defendants)
§ 402 A

57. Answering Defendant Pillsbury incorporates by reference its answers to the Paragraphs in all previous Counts above as fully as though same were set forth herein at length.

58-60. Denied. The averments contained in this paragraph refer to parties other than Answering Defendant Pillsbury, and, therefore, no answer is required.

WHEREFORE, Answering Defendant Pillsbury(s) demands judgment in its favor and against

Plaintiff together with costs, attorney's fees, and other relief as may be just and reasonable.

COUNT VIII
(Plaintiff v. The Kerry Defendants)
§ 402 A

61. Answering Defendant Pillsbury incorporates by reference its answers to the Paragraphs in all previous Counts above as fully as though same were set forth herein at length.

62-64. Denied. The averments contained in this paragraph refer to parties other than Answering Defendant Pillsbury, and, therefore, no answer is required.

WHEREFORE, Answering Defendant Pillsbury(s) demands judgment in its favor and against Plaintiff together with costs, attorney's fees, and other relief as may be just and reasonable.

COUNT IX
(Plaintiff v. The Moline Machinery Defendants)
§ 402 A

65. Answering Defendant Pillsbury incorporates by reference its answers to the Paragraphs in all previous Counts above as fully as though same were set forth herein at length.

66-68. Denied. The averments contained in this paragraph refer to parties other than Answering Defendant Pillsbury, and, therefore, no answer is required.

WHEREFORE, Answering Defendant Pillsbury(s) demands judgment in its favor and against Plaintiff together with costs, attorney's fees, and other relief as may be just and reasonable.

COUNT X
(Plaintiff v. The Pillsbury Company)
§ 402 A

69. Answering Defendant Pillsbury incorporates by reference its answers to the Paragraphs in all previous Counts above as fully as though same were set forth herein at length.

70-72. Denied. The averments contained in this paragraph state conclusions of law to which no answer is required. By way of further answer, however, after reasonable investigation, Answering Defendant Pillsbury lacks sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

WHEREFORE, Answering Defendant Pillsbury(s) demands judgment in its favor and against Plaintiff together with costs, attorney's fees, and other relief as may be just and reasonable.

COUNT XI.
(Plaintiff v. DCA)
Breach of Warranty

73. Answering Defendant Pillsbury incorporates by reference its answers to the Paragraphs in all previous Counts above as fully as though same were set forth herein at length.

74-75. Denied. The averments contained in this paragraph refer to parties other than Answering Defendant Pillsbury, and, therefore, no answer is required.

WHEREFORE, Answering Defendant Pillsbury(s) demands judgment in its favor and against Plaintiff together with costs, attorney's fees, and other relief as may be just and reasonable.

COUNT XII
(Plaintiff v. The Allied Domecq Defendants)
Breach of Warranty

76. Answering Defendant Pillsbury incorporates by reference its answers to the Paragraphs in all previous Counts above as fully as though same were set forth herein at length.

77-78. Denied. The averments contained in this paragraph refer to parties other than Answering Defendant Pillsbury, and, therefore, no answer is required.

WHEREFORE, Answering Defendant Pillsbury(s) demands judgment in its favor and against Plaintiff together with costs, attorney's fees, and other relief as may be just and reasonable.

COUNT XIII
(Plaintiff v. The Kerry Defendants)
Breach of Warranty

79. Answering Defendant Pillsbury incorporates by reference its answers to the Paragraphs in all previous Counts above as fully as though same were set forth herein at length.

80-81. Denied. The averments contained in this paragraph refer to parties other than Answering Defendant Pillsbury, and, therefore, no answer is required.

WHEREFORE, Answering Defendant Pillsbury(s) demands judgment in its favor and against Plaintiff together with costs, attorney's fees, and other relief as may be just and reasonable.

COUNT XIV
(Plaintiff v. The Moline Machinery Defendants)
Breach of Warranty

82. Answering Defendant Pillsbury incorporates by reference its answers to the Paragraphs in all previous Counts above as fully as though same were set forth herein at length.

83-84. Denied. The averments contained in this paragraph refer to parties other than Answering Defendant Pillsbury, and, therefore, no answer is required.

WHEREFORE, Answering Defendant Pillsbury(s) demands judgment in its favor and against Plaintiff together with costs, attorney's fees, and other relief as may be just and reasonable.

COUNT XV
(Plaintiff v. The Pillsbury Company)
Breach of Warranty

85. Answering Defendant Pillsbury incorporates by reference its answers to the Paragraphs in all previous Counts above as fully as though same were set forth herein at length.

86-87. Denied. The averments contained in this paragraph state conclusions of law to which no answer is required. By way of further answer, however, after reasonable investigation, Answering Defendant Pillsbury lacks sufficient knowledge or information to form a belief as to the truth of the averments contained in this paragraph and, therefore, denies same and demands strict proof thereof at trial.

WHEREFORE, Answering Defendant Pillsbury(s) demands judgment in its favor and against Plaintiff together with costs, attorney's fees, and other relief as may be just and reasonable.

NEW MATTER

88. Plaintiff's Complaint fails to state a claim against Answering Defendant Pillsbury upon which relief may be granted.

89. Plaintiff's alleged damages were caused by Plaintiff's own negligence or fault and any claims or damages should be barred or reduced accordingly.

90. Plaintiff's alleged damages were caused by the negligence or fault of other persons or entities over whom Answering Defendant Pillsbury has no control.

91. Plaintiff's alleged damages were caused by the unreasonable failure of Plaintiff, or other persons or entities over whom Answering Defendant Pillsbury had no control, to avoid the injuries complained of or to mitigate damages.

92. The injuries and damages sustained by Plaintiff, if any, were proximately caused by the independent, superceding and/or intervening acts or omissions of persons or entities or of things over which Answering Defendant Pillsbury had no control.

93. This Court lacks subject matter jurisdiction over this case because Workers Compensation laws are Plaintiff's exclusive remedy.

94. Plaintiff's claims are barred by principles of equity, including laches, unclean hands, equitable and/or legal estoppel.

95. Answering Defendant Pillsbury alleges that if Plaintiff was injured or damaged as set forth in his Complaint, that said injury or damage was the result of open and obvious conditions known to Plaintiff, or in the alternative, the result of risks or hazards voluntarily assumed by Plaintiff.

96. Answering Defendant Pillsbury is not the successor-in-liability for injuries or damages caused or incurred as a result of products manufactured prior to its acquisition of a portion of DCA Food Industries, Inc.

97. Plaintiff's claims are barred by the applicable statute of limitations.

98. Answering Defendant Pillsbury denies that Plaintiff used any product allegedly manufactured, designed, marketed, packaged, furnished, supplied and/or sold by Pillsbury. If such use is proven, however, Pillsbury alleges that Plaintiff's damages, if any, were caused by modification and/or alteration made after any product of Pillsbury left Pillsbury's control, and that this modification and/or alteration was made without Pillsbury's knowledge or consent and was unforeseen and unforeseeable by Pillsbury.

99. Answering Defendant Pillsbury denies that it leased, designed, evaluated, manufactured, marketed, packaged, furnished, supplied or sold any product used by Plaintiff. If such use is proven, however, Pillsbury alleges that Plaintiff's damages, if any resulted because the product in question was used for a purpose or in a manner other than that for which it was intended and in disregard of warning instructions and directions regarding its use, and this misuse was not reasonably foreseeable to Pillsbury.

100. No defect existed at the time of sale in any product sold or distributed by Answering Defendant Pillsbury.

101. No act or omission by Answering Defendant Pillsbury proximately caused or contributed to any of the damages alleged in the Complaint.

102. Answering Defendant Pillsbury was not negligent in any manner.

103. Any representations, if made, by Answering Defendant Pillsbury, were true and not false representations.

104. Plaintiff's claims are barred in that if any product sold or distributed by Answering Defendant Pillsbury was used, installed, or removed as alleged in the Complaint, such product was manufactured, distributed, and sold in conformity with the state of the art and in conformity with prevailing industry standards at the time of its sale or distribution.

105. Any claims by Plaintiff based upon alleged warranties, whether express or implied, are barred in that there is no privity of contract between Plaintiff and Answering Defendant Pillsbury and no timely notice of any alleged breach of warranty was given to Answering Defendant Pillsbury.

106. Answering Defendant Pillsbury did not make any express or implied warranties to Plaintiff.

107. Any warranties deemed to have been made by Answering Defendant Pillsbury were satisfied or fulfilled.

108. Plaintiff cannot sustain a cause of action for breach of warranty against Answering Defendant Pillsbury.

109. The product at issue in this matter was fit for all appropriate uses.

110. The Answering Defendant Pillsbury hereby reserves the right to interpose such other defenses as discovery may disclose.

NEW MATTER PURSUANT TO RULE 2252(d) IN THE FORM
OF A CROSSCLAIM AGAINST CO-DEFENDANT, DCA FOOD INDUSTRIES,
INC.; KERRY INC. F/K/A KERRY INGREDIENTS, INC.; KERRY INGREDIENTS, INC.;
KERRY GROUP PLC; MOLINE MACHINERY, LTD LP T/A MOLINE MACHINERY;
MOLINE MACHINERY, LTD, IC-DISC T/A MOLINE MACHINERY; MOLINE
MACHINERY; J. LYONS & CO.; J. LYONS & CO., INC.; ALLIED LYONS, PLC;
ALLIED DOMEQ NORTH AMERICAN CORPORATION;
ALLIED DOMEQ SPIRITS AND WINE USA; ALLIED DOMEQ PLC; PERNOD-
RICARD USA, LLC; AND PERNOD RICARD SA;

111. Answering Defendant Pillsbury hereby incorporates all prior responses as if fully set forth herein at length.

112. Answering Defendant, Pillsbury, avers that if the Plaintiff sustained any compensable damages as alleged in their Complaint, said damages were caused by the acts and/or omissions of any and/or all of the co-defendants listed above for the reasons set forth in Plaintiff's Complaint, which allegations are hereby incorporated by reference as if each of said allegations were more fully set forth herein at length, and which allegations have previously been denied.

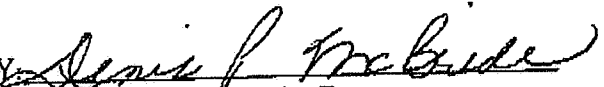
113. As such, any and/or all of the Co-defendants is/are solely liable to the Plaintiff for any and all injuries suffered by the Plaintiff, or are jointly and/or severally liable with the Answering Defendant Pillsbury, or are liable over to Answering Defendant Pillsbury for indemnification and/or contribution, any and all liability on the part of Answering Defendant Pillsbury being expressly denied.

WHEREFORE, Answering Defendant, Pillsbury, respectfully demands:

1. Judgment in its favor and against the Plaintiff, together with costs;
2. Judgment that if there is any liability to Plaintiff, then Co-Defendants, one or all, are solely liable to Plaintiff;

3. In the event that a verdict is recovered by Plaintiff against Answering Defendant Pillsbury, then Answering Defendant may have judgment over and against Co-Defendants, one or all, by way of indemnification and/or contribution for the amount recovered by Plaintiff against Answering Defendant Pillsbury together with costs.

KENT & McBRIDE, P.C.


BY 
Denis P. McBride, Esquire
Attorney for Defendant
Pillsbury

VERIFICATION

Denis P. McBride, Esquire, being duly sworn according to law, deposes and says that the facts set forth in the foregoing Answer to Plaintiff's Complaint with New Matter and New Matter in the Nature of a Crossclaim are true and correct to the best of his knowledge, information and belief.

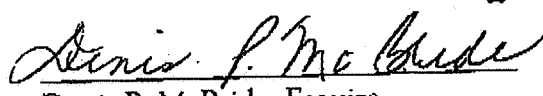
This statement is made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

Date: 8-14-06


Denis P. McBride, Esquire

CERTIFICATION OF SERVICE

I hereby certify that I have served this paper upon all parties or their attorneys by regular First-Class mail.


Denis P. McBride, Esquire

CERTIFICATE OF SERVICE

I, David E. Edwards, hereby certify that a true and correct copy of the within Notice of Removal was mailed by U.S. Mail, first-class, postage prepaid, to the following counsel of record on this 18th day of August, 2006.

George F. Schoener, Jr., Esq.
George F. Schoener, Jr., P.C.
8 Penn Center, Suite 1301
1628 JFK Blvd.
Philadelphia, PA 19103
Attorneys for Plaintiff

Ted D. Broom, Esq.
William J. Devlin, Jr., & Assoc.
100 West Elm Street, Suite 200
Conshohocken, PA 19428
Attorneys for Moline Defendants

Denis P. McBride, Esq.
Kent & McBride
1617 JFK Blvd., Suite 1200
Philadelphia, PA 19107
Attorneys for Pillsbury Co.

DCA Food Industries, Inc.
P.O. Box 368
8106 Stayton Drive
Jessup, Maryland 20794

J. Lyons & Co., Inc.
270 W. 17th Street, Apt. 18B
New York, NY 10011

J. Lyons & Co.
Bedminster Down
The Pavilions, Bridgewater Road
Bristol, BS13 8 AR United Kingdom

Allied Lyons PLC
Bedminster Down
The Pavilions Bridgewater Road
Bristol, BS13 8 AR United Kingdom

Allied Domencq North American Corporation
355 Riverside Avenue
Westport, CT 06880-4810

Allied Domencq Spirits and Wine USA
c/o CT Corporation System
111 Eighth Avenue
New York, NY 10011

Allied Domecq PLC
Bedminster Down
The Pavilions Bridgewater Road
Bristol, BS13 8 AR United Kingdom

Pernod-Ricard USA, LLC
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